

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, March 9, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Robert Bartholomew  
Paul Schultz  
Walter Tarmann

**BOARD MEMBERS ABSENT:** Walter Schmidt

**SECRETARY TO THE BOARD:** Mary E. Finet

**OTHERS PRESENT:** Wayne Holtan, BA05:007, petitioner  
Al Gagliano, BA05:010, petitioner  
Russell Wambold, BA05:010, neighbor  
Urban and Gail Weber, BA05:011, petitioners  
Jim Samuels, BA05:010 & BA05:011, builder  
Diane Higgins, BA05:012, petitioner  
Pat Schaller, BA05:012, builder  
Al Mies, BA05:012, neighbor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Tarmann *I move to approve the Summary of the Meeting of February 23, 2005.*

The motion was seconded by Mr. Bartholomew and carried with four yes votes.

**NEW BUSINESS:**

**BA05:007 WAYNE AND JULIE HOLTAN (held in abeyance from February 23, 2005)**

Mr. Ward *I make a motion to adopt the staff's recommendation for approval, as stated in the Staff Report from the February 23rd meeting, with the understanding that the variance is being granted from Section 3.09 (2)(A)(3) and Section 3.09(4), with the recommended condition modified to read as follows:*

*“A firewall(s), as required in the Building Code, shall be installed on the side of the storage building facing the attached garage and/or on the side of the attached garage facing the storage building.”*

The motion was seconded by Mr. Bartholomew and carried with four yes votes.

The staff's recommendation was for approval, with the following condition:

A firewall sufficient to meet the one-hour fire rating contained in the Building Code shall be placed on the side of the storage building facing the attached garage and on the side of the attached garage facing the storage building.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended condition, will allow the existing storage building to remain on the property. The extreme topography is a limiting factor on the property, which does not allow much flat area for the construction of structures. If the petitioner were required to move the storage building to meet the offset requirement, it would most likely require the removal of several large trees. Finally, the approval of this request, as recommended, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

**BA05:010 AL AND CINDY GAGLIANO - Owners, (J.G. Samuels, Inc - Builder)**

Mr. Ward *I make a motion to adjourn the hearing until the meeting of April 13, 2005, in order to provide the petitioner the opportunity to redesign his proposed residence to bring it more into conformance with the Ordinance requirements, with the understanding that before leaving tonight, the petitioner will submit a written request to adjourn the hearing to April 13, 2005.*

The motion was seconded by Mr. Tarmann and carried with four yes votes.

The staff's recommendation was for denial of a shore setback variance to permit the construction of a new residence within 75 ft. of the main body of Eagle Spring Lake, but approval of a shore setback variance to permit the construction of a new residence less than 75 ft. from the channel separating this island property from the mainland and approval of a floodplain setback variance to permit the construction of a new residence less than 75 ft. from the floodplain, subject to the conditions noted below.

The staff's recommendation was for approval of a variance to remodel a non-conforming structure in excess of 50% of its fair market value, if such a variance is necessary to convert the existing residence into a detached garage, and approval of shore and floodplain setback variances and a special exception from the accessory building floor area ratio requirement to permit the existing residence to be converted into a detached garage, subject to the conditions noted below.

1. The new residence and all appurtenances, such as an attached garage, decks, patios, covered porches, and “covered gardens”, must be located at least 75 ft. from the western (lakeside) shoreline, in conformance with the required minimum shore setback requirement, but the new

residence and its appurtenances may be located as close as 45 ft. from the shoreline on the channel side (north and east sides).

2. The first floor elevation of the new residence must be at or above 823.1 ft. above mean sea level (two feet above the 100-year flood elevation).
3. The new residence may not have a full basement. If it is constructed on a crawl space, the floor of the crawl space must be at or above 821.1 ft. above mean sea level (the 100-year flood elevation).
4. In addition to the area proposed to be removed from the residence to be converted to a detached garage, the 8 ft. x 30.3 ft. extension on the east side of the structure and the 6.4 ft. x 7.3 ft. extension on the west side of the structure must also be removed. This will result in an 1,815 sq. ft. detached garage and a nearly conforming accessory building floor area ratio of approximately 3.1%.
5. The proposed detached garage may not contain a full bathroom (toilet, sink, bathtub and/or shower), but it may contain a half bathroom (toilet and sink).
6. The first floor of the detached garage must be at or above 822.1 ft. above mean sea level (one foot above the 100-year flood elevation). If the first floor is not at or above 822.1 ft. above mean sea level, the structure must be raised to that elevation.
7. Prior to the issuance of a Zoning Permit, a complete set of plans for the new residence, including all appurtenances, and a complete set of plans for the detached garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed new residence in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
9. Upon completion of the foundation of the new residence and, if necessary, the raising of the detached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Eagle Building Inspector and to the Planning and Zoning Division staff, prior to proceeding with construction.
10. The finished grades in the areas within 15 ft. of the new residence and the detached garage shall be at least 822.1 ft. above mean sea level (one foot above the 100-year flood elevation).
11. In order to ensure that the above-condition is complied with, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, and an erosion and sediment control plan. This grading plan may be combined with the Plat of Survey required in Condition No. 8.

12. If the grading to be done in conjunction with the proposed construction will exceed 10,000 sq. ft., a Chapter 30 Permit must be obtained from the State of Wisconsin Department of Natural Resources, and a copy of that Chapter 30 Permit must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
13. If modifications to the existing access bridge are proposed, a Chapter 30 Bridge Permit must be obtained from the State of Wisconsin Department of Natural Resources, and a copy of that Chapter 30 Bridge Permit must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
14. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
15. The 12.2 ft. x 18.2 ft. quonset hut storage shed must be removed from the property, prior to the issuance of a Zoning Permit.
16. The fenced storage area on the property must be eliminated.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The property has physical limitations because it is an island, but variances should not be granted unless it can be demonstrated that denial of the variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. A hardship exists with respect to conformance with the shore and floodplain setback requirements because the width of the island (approximately 165 ft. at the widest point) makes it impossible to locate a residence in conformance with the required 75 ft. shore and floodplain setback from both the lake and the channel. However, denial of a shore setback variance to permit the construction of a new residence within 75 ft. of the main body of Eagle Spring Lake would not result in an unnecessary hardship, provided a shore setback variance is granted, as recommended, to permit the construction of a new residence within 75 ft. of the channel separating this island property from the mainland. As recommended, denial of a shore setback variance from the main body of Eagle Spring Lake, but approval of a shore setback variance to permit the construction of a new residence 45 ft. from the channel, will not prevent the use of the property for a permitted purpose or be unnecessarily burdensome, since a residence approximately 30 ft. wide could be designed to fit within the building envelope, as recommended.

Although the owners may desire a wider residence, variances should only be granted to provide the minimum relief necessary to provide a reasonable use of the property. Approval of a floodplain setback variance to permit the construction of a new residence less than 75 ft. from the floodplain, as recommended, will allow a reasonable use of the property in the form of a new residence in a more conforming location. As recommended, the new residence will be located in approximately the same location as the existing detached garage, on the widest portion of the

island, which maximizes the shore and floodplain setback. Therefore, the approval of shore and floodplain setback variances to permit the construction of a new residence, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

Approval of a special exception from the accessory building floor area ratio requirement to permit the existing residence to be converted to a detached garage, with the recommended conditions, would not be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood, or contrary to the public interest. Approval of shore and floodplain setback variances and, if necessary, a variance to remodel a non-conforming structure in excess of 50% of its fair market value, to permit the existing residence to be converted into a detached garage, with the recommended conditions, is not contrary to the public interest and will allow a reasonable use of the property in the form of a smaller structure with an increased shore setback. The existing detached garage and storage shed currently provide 1,600 sq. ft. of storage space that would be lost if they are removed to allow for the construction of a new residence. A larger garage would compensate for the lack of a basement in the residence, but it is felt that a further reduction in the size of the proposed detached garage, as recommended, will result in a more reasonably-sized structure, nearly in conformance with the accessory building floor area ratio requirement, that will still provide adequate storage on the property. However, it is felt that the proposed detached garage should not be permitted to contain a full bathroom, as proposed, because that would facilitate its use as an illegal guesthouse or second living unit. Therefore, the approval of a special exception from the accessory building floor area ratio requirement and the approval of shore and floodplain setback variances and, if necessary, the approval of a variance to remodel a non-conforming structure in excess of 50% of its fair market value, to permit the existing residence to be converted into a detached garage, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance

**BA05:011 URBAN AND GAIL WEBER - Owners, (J.G. Samuels, Inc - Builder)**

Mr. Tarmann

*I move to approve this request in accordance with the staff's recommendation, as stated in the Staff Report, for the reasons and conditions set forth in the Staff Report, with Condition No. 2. changed to read as follows:*

*"Prior to the issuance of a Zoning Permit, certification from a structural engineer that the foundation is adequate to accommodate the proposed second floor, must be submitted to the Planning and Zoning Division staff. If it is determined that a new foundation or structural alterations to the existing foundation are required, this decision shall be brought back to the Board for reconsideration as "Old Business".*

The motion was seconded by Mr. Bartholomew and carried with four yes votes.

The staff's recommendation was for approval, with the following conditions:

1. Prior to the issuance of a Zoning Permit, a maintenance easement, as proposed, over a 10 ft. wide area of the adjacent lot to the west, in the area adjacent to the residence to be remodeled, must be recorded in the Waukesha County Register of Deed's office and a copy of the recorded document must be furnished to the Planning and Zoning Division staff.

2. Prior to the issuance of a Zoning Permit, certification from a structural engineer that the foundation is adequate to accommodate the proposed second floor, must be submitted to the Planning and Zoning Division staff.
3. The 11 ft. x 12.25 ft. screen porch must be removed and it may not be rebuilt, as proposed, as an enclosed and heated porch on the lake side of the residence. However, an enclosed and heated porch or a one-story addition to the residence, not exceeding the size of the existing screen porch, may be constructed on the east side of the residence, provided the north wall of the new enclosed and heated porch or one-story addition does not extend closer to the lake than the north wall of the residence or the north wall of the residence extended, or an enclosed and heated porch or a one-story addition to the residence, not exceeding the size of the existing screen porch, may be constructed on the south side of the residence. If the west wall of a new enclosed and heated porch or one-story addition is not located at least 5 ft. from the west lot line, the area of the proposed maintenance easement required in Condition No. 1 shall be extended to provide adequate area in which to maintain the west side of the enclosed and heated porch or addition.
4. Prior to the issuance of a Zoning Permit, a copy of the sanitary permit issued by the Environmental Health Division for a new waste disposal system must be furnished to the Planning and Zoning Division staff. If an enclosed and heated porch or a one-story addition to the residence, as set forth in Condition No. 3, is to be constructed, evidence must be submitted to the Planning and Zoning Division staff that the Environmental Health Division has no objection to the proposed enclosed and heated porch or addition and that it meets all required minimum separation distances from the new waste disposal system, prior to the issuance of a Zoning Permit.
5. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. If an enclosed and heated porch or a one-story addition to the residence, as set forth in Condition No. 3, is to be constructed, a stake-out survey showing the location of the proposed enclosed and heated porch or one-story addition, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
7. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the proposed construction does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. Hardships exist due to the size of the lot, the width of the lot, the steep slope, and the placement of existing buildings. In addition, the steep slope and the mature trees on the property are physical limitations. The existing residence is nearly centered between the houses on the adjacent lots and removing the existing screen porch, as recommended, will bring the residence very close to conformance with the shore and floodplain setback requirements. Relocating the residence to a more conforming location would likely require the removal of several mature trees and may require excavation into the hillside, which would be detrimental to the neighborhood and contrary to the public interest and the purpose and intent of the Ordinance. Further, relocating the residence to a more conforming location would serve no useful purpose, as long as the proposed maintenance easement can be obtained. Therefore, the approval of this request, with the recommended conditions, is not detrimental to the surrounding neighborhood or contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

**BA05:012 DIANE HIGGINS**

Mr. Schultz

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report, with Condition No. 4. modified to read as follows:*

*"The proposed residence must not exceed three stories, as viewed from the lake, and it must conform with the maximum height requirement, of 35 ft., as set forth in the Ordinance."*

The motion was seconded by Mr. Bartholomew and carried with four yes votes.

The staff's recommendation was for approval, with the following conditions:

1. The proposed residence must be reduced in size so that the total floor area, including the first and second floors, any covered porches, and the attached garage, but not any living area in the exposed basement, does not exceed 2,226 sq. ft. This will result in a floor area ratio of approximately 22.6%.
2. The proposed residence must have an attached garage of at least 400 sq. ft.
3. Any storage area over the attached garage must be included in the floor area calculations, unless it is accessible only via pull-down stairs from the garage and cannot be accessed from the upper level of the residence. If the house plans indicate that any storage area over the attached garage could be easily converted to living area with a direct connection to the upper level of the residence, a Declaration of Restrictions, stating that area cannot be converted to living area without the approval of the Waukesha County Board of Adjustment or its successor, must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit.
4. The proposed residence must not exceed three stories, as viewed from the lake.
5. The residence must be at least 7 ft. from the side lot lines, as measured to the outer edges of the walls and to the proposed chimney, with overhangs not to exceed two (2) ft. in width. Any

sidewalks, stairs, or walkways along the sides of the residence must be located at least three (3) ft. from the side lot lines.

6. The residence and attached garage must be at least 21 ft. from the edge of the paved roadway, as proposed, with an overhang not to exceed two (2) ft. in width.
7. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. No new retaining walls will be permitted within 75 ft. of the lake, unless the Planning and Zoning Division staff determines that they are necessary for erosion and sediment control. No new retaining walls will be permitted within 5 ft. of the side lot lines, without approval from the Town of Oconomowoc Plan Commission and the Waukesha County Park and Planning Commission.
9. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached garage, deck, and patio, as well as any proposed sidewalks, stairs, or walkways, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
10. In order to ensure the construction of a new residence and attached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 9.
11. Unless sewer service is available to the property or we have been advised by the Town of Oconomowoc that construction of the proposed extension of the sanitary sewer system has progressed to the point that sewer service would be available to the residence prior to the issuance of an Occupancy Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. Hardships exist due to the size of the lot, the width of the lot, and the steep slope on the lot. Conformance with the maximum permitted floor area ratio of 15% would permit a total floor area of only 1,477 sq. ft., which is not enough to permit the construction of a reasonably-sized residence and garage, and conformance with the



open space requirement of 10,000 sq. ft. is impossible because the lot area is only 9,850 sq. ft. Therefore, some relief from the floor area ratio and open space requirements must be provided. Variances, however, should be granted only to provide the minimum relief necessary for a reasonable use of the property. It is felt that the proposed residence and attached garage is too large for the lot and a smaller residence and attached garage, as recommended, would still provide a reasonable use of the property that is consistent with other development in the area. As recommended, a total floor area of 2,226 sq. ft. is not unnecessarily burdensome and will permit the construction of a residence and attached garage that will be appropriately sized for the lot, in keeping with other development in the area, and not detrimental to the surrounding neighborhood or contrary to the public interest.

The steep slopes on the property are also physical limitations. An offset variance to permit a new residence to be located 7 ft. from the side lot lines will not adversely affect the adjacent properties and is consistent with the offset variance granted on the similarly-sized property one lot to the east of the subject property and with the minimum offset that could be permitted after sewer service becomes available. Without a road setback variance, extensive filling would be required to locate the residence and attached garage farther from the road. Further, a road setback variance, as recommended, will not interfere with the public's use of the road or be a safety hazard and will result in a residence with an attached garage located 21 ft. from the edge of the paved roadway, which is approximately 12 ft. farther from the road than the existing detached garage and will provide enough area for safe ingress and egress from the garage. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**OTHER ITEMS REQUIRING BOARD ACTION:**

None

**ADJOURNMENT:**

Mr. Bartholomew                      *I make a motion to adjourn this meeting at 8:50 p.m.*

The motion was seconded by Mr. Schultz and carried with four yes votes.

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment